

## **IC 31-19-11**

### **Chapter 11. Disposition of Petition for Adoption; Adoption Decree**

#### **IC 31-19-11-1 Version a**

##### **Decree; affidavit; criminal convictions and juvenile adjudications**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 1. (a) Whenever the court has heard the evidence and finds that:

- (1) the adoption requested is in the best interest of the child;
- (2) the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education;
- (3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;
- (4) the attorney or agency arranging an adoption has filed with the court an affidavit prepared by the state department of health under IC 31-19-5-16 indicating whether a man is entitled to notice of the adoption because the man has registered with the putative father registry in accordance with IC 31-19-5;
- (5) proper notice arising under subdivision (4), if notice is necessary, of the adoption has been given;
- (6) the attorney or agency has filed with the court an affidavit prepared by the state department of health under:
  - (A) IC 31-19-6 indicating whether a record of a paternity determination; or
  - (B) IC 16-37-2-2(g) indicating whether a paternity affidavit executed under IC 16-37-2-2.1;has been filed in relation to the child;
- (7) proper consent, if consent is necessary, to the adoption has been given;
- (8) the petitioner for adoption is not prohibited from adopting the child as the result of an inappropriate criminal history described in subsection (c) or (d); and
- (9) the person, licensed child placing agency, or local office that has placed the child for adoption has provided the documents and other information required under IC 31-19-17 to the prospective adoptive parents;

the court shall grant the petition for adoption and enter an adoption decree.

(b) A court may not grant an adoption unless the state department of health's affidavit under IC 31-19-5-16 is filed with the court as provided under subsection (a)(4).

(c) A juvenile adjudication for an act listed in subdivisions (1) through (21) that would be a felony if committed by an adult, a conviction of a misdemeanor related to the health and safety of a child, or a conviction of a felony not listed in subdivisions (1) through (21) by a petitioner for adoption is a permissible basis for the court to deny the petition for adoption. In addition, the court may not

grant an adoption if a petitioner for adoption has been convicted of any of the felonies described as follows:

- (1) Murder (IC 35-42-1-1).
- (2) Causing suicide (IC 35-42-1-2).
- (3) Assisting suicide (IC 35-42-1-2.5).
- (4) Voluntary manslaughter (IC 35-42-1-3).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Battery as a felony (IC 35-42-2-1).
- (7) Domestic battery (IC 35-42-2-1.3).
- (8) Aggravated battery (IC 35-42-2-1.5).
- (9) Kidnapping (IC 35-42-3-2).
- (10) Criminal confinement (IC 35-42-3-3).
- (11) A felony sex offense under IC 35-42-4.
- (12) Carjacking (IC 35-42-5-2).
- (13) Arson (IC 35-43-1-1).
- (14) Incest (IC 35-46-1-3).
- (15) Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).
- (16) Child selling (IC 35-46-1-4(d)).
- (17) A felony involving a weapon under IC 35-47 or IC 35-47.5.
- (18) A felony relating to controlled substances under IC 35-48-4.
- (19) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.
- (20) A felony under IC 9-30-5.
- (21) A felony under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (20).

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (10), (12), (13), (17), (18), or (20) or its equivalent under subdivision (21), if the date of the conviction did not occur within the immediately preceding five (5) year period.

(d) A court may not grant an adoption if the petitioner is a sex or violent offender (as defined in IC 11-8-8-5) or a sexually violent predator (as defined in IC 35-38-1-7.5).

*As added by P.L.1-1997, SEC.11. Amended by P.L.257-1997(ss), SEC.38; P.L.200-1999, SEC.23; P.L.1-2002, SEC.126; P.L.123-2002, SEC.29; P.L.129-2005, SEC.3; P.L.140-2006, SEC.17 and P.L.173-2006, SEC.17; P.L.145-2006, SEC.253; P.L.1-2007, SEC.196; P.L.138-2007, SEC.44; P.L.216-2007, SEC.34; P.L.3-2008, SEC.238; P.L.21-2010, SEC.7; P.L.162-2011, SEC.16; P.L.128-2012, SEC.56.*

#### **IC 31-19-11-1 Version b**

##### **Decree; affidavit; criminal convictions and juvenile adjudications**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 1. (a) Whenever the court has heard the evidence and finds that:

- (1) the adoption requested is in the best interest of the child;
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- (3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;
- (4) the attorney or agency arranging an adoption has filed with the court an affidavit prepared by the state department of health under IC 31-19-5-16 indicating whether a man is entitled to notice of the adoption because the man has registered with the putative father registry in accordance with IC 31-19-5;
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- (6) the attorney or agency has filed with the court an affidavit prepared by the state department of health under:
  - (A) IC 31-19-6 indicating whether a record of a paternity determination; or
  - (B) IC 16-37-2-2(g) indicating whether a paternity affidavit executed under IC 16-37-2-2.1;has been filed in relation to the child;
- (7) proper consent, if consent is necessary, to the adoption has been given;
- (8) the petitioner for adoption is not prohibited from adopting the child as the result of an inappropriate criminal history described in subsection (c) or (d); and
- (9) the person, licensed child placing agency, or local office that has placed the child for adoption has provided the documents and other information required under IC 31-19-17 to the prospective adoptive parents;

the court shall grant the petition for adoption and enter an adoption decree.

(b) A court may not grant an adoption unless the state department of health's affidavit under IC 31-19-5-16 is filed with the court as provided under subsection (a)(4).

(c) A juvenile adjudication for an act listed in subdivisions (1) through (21) that would be a felony if committed by an adult, a conviction of a misdemeanor related to the health and safety of a child, or a conviction of a felony not listed in subdivisions (1) through (21) by a petitioner for adoption is a permissible basis for the court to deny the petition for adoption. In addition, the court may not grant an adoption if a petitioner for adoption has been convicted of any of the felonies described as follows:

- (1) Murder (IC 35-42-1-1).
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- (5) Reckless homicide (IC 35-42-1-5).
- (6) Battery as a felony (IC 35-42-2-1).
- (7) Domestic battery (IC 35-42-2-1.3).
- (8) Aggravated battery (IC 35-42-2-1.5).

- (9) Kidnapping (IC 35-42-3-2).
- (10) Criminal confinement (IC 35-42-3-3).
- (11) A felony sex offense under IC 35-42-4.
- (12) Carjacking (IC 35-42-5-2) (repealed).
- (13) Arson (IC 35-43-1-1).
- (14) Incest (IC 35-46-1-3).
- (15) Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).
- (16) Child selling (IC 35-46-1-4(d)).
- (17) A felony involving a weapon under IC 35-47 or IC 35-47.5.
- (18) A felony relating to controlled substances under IC 35-48-4.
- (19) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.
- (20) A felony under IC 9-30-5.
- (21) A felony under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (20).

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (10), (12), (13), (17), (18), or (20) or its equivalent under subdivision (21), if the date of the conviction did not occur within the immediately preceding five (5) year period.

(d) A court may not grant an adoption if the petitioner is a sex or violent offender (as defined in IC 11-8-8-5) or a sexually violent predator (as defined in IC 35-38-1-7.5).

*As added by P.L.1-1997, SEC.11. Amended by P.L.257-1997(ss), SEC.38; P.L.200-1999, SEC.23; P.L.1-2002, SEC.126; P.L.123-2002, SEC.29; P.L.129-2005, SEC.3; P.L.140-2006, SEC.17 and P.L.173-2006, SEC.17; P.L.145-2006, SEC.253; P.L.1-2007, SEC.196; P.L.138-2007, SEC.44; P.L.216-2007, SEC.34; P.L.3-2008, SEC.238; P.L.21-2010, SEC.7; P.L.162-2011, SEC.16; P.L.128-2012, SEC.56; P.L.158-2013, SEC.311.*

## **IC 31-19-11-2**

### **Custody provision in decree**

Sec. 2. If the child is a ward of:

- (1) a guardian;
- (2) an agency; or
- (3) the department;

the court shall provide for the custody of the child in the adoption decree.

*As added by P.L.1-1997, SEC.11. Amended by P.L.146-2008, SEC.560.*

## **IC 31-19-11-3**

### **Request for financial assistance; determination of eligibility for financial assistance**

Sec. 3. (a) If the petition for adoption contained a request for financial assistance, the court shall refer the petitioner to the

department to complete and submit to the department the Indiana Adoption Program application for a determination of eligibility for:

- (1) adoption assistance under 42 U.S.C. 673, including applicable federal and state regulations; or
- (2) an adoption subsidy under IC 31-19-26.5.

(b) The department shall determine the eligibility of the adoptive child for financial assistance and the amount of assistance, if any, that will be provided.

(c) The court may not order payment of:

- (1) adoption assistance under 42 U.S.C. 673; or
- (2) any adoption subsidy under IC 31-19-26.5.

*As added by P.L.1-1997, SEC.11. Amended by P.L.146-2008, SEC.561; P.L.131-2009, SEC.22.*

#### **IC 31-19-11-4**

##### **Names**

Sec. 4. If a new name is requested in a petition for adoption, upon the entry of an adoption decree the child shall take the name requested.

*As added by P.L.1-1997, SEC.11.*

#### **IC 31-19-11-5**

##### **Dismissal of petition; gradual change of custody**

Sec. 5. (a) If the court dismisses a petition for adoption, the court shall determine the person who should have custody of the child.

(b) If the court determines that it is necessary to change the child's custody to another person, regardless of the person's right to immediate custody, the court may order a plan for a gradual change of custody to ease the child's transition unless the gradual change of custody would:

- (1) endanger the child's physical health; or
- (2) significantly impair the child's emotional development.

(c) The court may do the following:

- (1) Implement a change of custody under this section by gradually increasing the child's visitation with each person who is entitled to custody.
- (2) Order counseling for the child and the persons involved in the change of custody so that a plan for the gradual change of custody may be developed and implemented.
- (3) Consult with the counselor who assists the persons in developing the plan to determine an order for the gradual change of custody that meets the child's best interests.

*As added by P.L.1-1997, SEC.11.*

#### **IC 31-19-11-6**

##### **Pendency of appeal**

Sec. 6. The court may hear and grant a petition for adoption even if an appeal of a decision regarding the termination of the parent-child relationship is pending.

*As added by P.L.1-1997, SEC.11.*